Supreme Court
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No. 96-619

In The

Supreme Court of the United States

October Term, 1996

CENTRA, INC., a Michigan corporation, CENTRAL TRANSPORT, INC., a Michigan corporation, CENTRAL CARTAGE COMPANY, a Michigan corporation, MANUEL J. MOROUN, a/k/a MATTIE MOROUN, and AGNES A. MOROUN, jointly and severally,

Petitioners,

v.

CHARLES GARAVAGLIA,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals For The State Of Michigan

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Respondent restates the question presented as follows:

Was it error for Michigan's intermediate appellate court to refer to a federal statute, 29 U.S.C. § 158(b)(1)(B), in deciding whether there was a violation of Michigan public policy for an employer to fire its collective bargaining representative because a union demanded that it do so to have labor peace?

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STATUTES CITED:

28 U.S.C. § 1257(a) 1, 5, 6

29 U.S.C. § 158(b)(1)(B) 3, 4, 7

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent requests that the Court deny the petition for writ of certiorari seeking review of an opinion by the Michigan Court of Appeals. The opinion is reported at 211 Mich App 625; 536 NW2d 805 (1995).

STATEMENT OF JURISDICTION

This Court lacks jurisdiction under 28 U.S.C. § 1257(a) because:

- No claim of right is made under a federal statute. Respondent's claim was decided based on the public policy of the State of Michigan.
- No federal question was raised or decided by the Michigan court. The ruling below decided, under state law, the adequacy of the jury instruction and the sufficiency of the trial evidence.
- Petitioners' claim of error was not preserved for appeal.

STATEMENT OF THE CASE

This case involves the reference by a state court to federal legislation to determine whether the firing of respondent violated state public policy.

A. Relevant Facts and Proceedings.

Respondent was petitioners' collective bargaining representative in charge of labor negotiations with the

Teamster Union. His complaint alleged, in part, that he was fired in breach of public policy because petitioners "submitted to union demands that they fire plaintiff to achieve 'labor peace'. . . . " Op., Petitioners' Appendix B at 5a. Respondent's complaint did not mention a right granted by a federal statute. He invoked Michigan public policy. The complaint alleged:

> 30. That the termination of the employment of the Plaintiff CHARLES GARAVAGLIA, under these circumstances was a breach of the public policy of the State of Michigan, and this breach of the public policy of the State of Michigan constituted a wrongful discharge, causing the following damages and injuries to the Plaintiff,. . . .

First Amended Complaint, 1/19/88.

The trial court instructed the jury that:

> [I]t is against public policy to restrain or coerce an employer in the selection of its representative for collective bargaining or . . . to refuse to bargain with an employer based on the employers selection of its representative.

Op., Appendix B at 8a-9a. The Michigan Court of Appeals "[found] that the trial court's instruction adequately informed the jury of the law." *Id.* at 9a. According to the court, a claim alleging breach of public policy "may be premised on the alleged violation of a federal statute." *Id.* The point, however, was the determination of Michigan's public policy:

> As this Court has stated, "the better view is that an employer at will is not free to discharge an employee when the reason for the discharge is an intention on the part of the employer to

> contravene the public policy *of this state.*" Thus, it is the fact that the employer discharged plaintiff in contravention of the public policy *of this state* that permits plaintiff's claim regarding the breach of public policy.

Id. (emph. added; citation deleted).

In dicta, the Michigan Court of Appeals referred to plaintiff's rights under a federal statute:

> *In any event,* plaintiff was entitled to be the employer's bargaining representative without influences from the union. Under the NLRA [29 U.S.C. § 158(b)(1)(B)], a duty is imposed on the union not to influence or interfere with an employer's choice of a bargaining representative. Accordingly, the NLRA did confer a right upon plaintiff to be the bargaining representative without being pressured to leave by the union.

Id. (emph. added).

B. Correction of Misstatements in the Petition.

Pursuant to United States Supreme Court Rule 15.2, respondent addresses misstatements made in the petition.

Petitioners misrepresent that they preserved an objection to the legal sufficiency of respondent's public policy claim. Petition at 3. However, the Michigan Court of Appeals pointed out:

> We first note that the question regarding legal sufficiency raised by defendants *was not raised* in the trial court in their motion for a directed verdict.

Op., Petitioners' Appendix B at 7a (emph. added). Thus, under Michigan law, the issue was not legal sufficiency, but:

> [W]hether the instructions as given adequately informed the jury of the applicable law reflecting the various evidentiary claims in the particular case.

Id. Accordingly, whether 29 U.S.C. § 158(b)(1)(B) by its express language conferred rights or applied to respondent was not the legal issue. As the Michigan Court of appeals stated, for an employee's public policy claim under Michigan law "the fact that the NLRA does not specifically confer rights upon plaintiff is not dispositive." Petitioners' Appendix B at 9a.

Furthermore, petitioners did not object to the trial court's public policy instruction. They agreed it was correct and so informed the Michigan Supreme Court:

> [T]he Court should note that defendants are *not* asserting that the trial court erred when it instructed that:
>
> "Now, you are further instructed that it is against the public policy to restrain or coerce an employer in the selection of its representative for collective bargaining or adjustment of grievances or; secondly, to refuse to bargain with an employer based on the employers' selection of its representative."
>
> *The instruction is correct.*

App. For Leave To Appeal To Mich. S.Ct. 9/12/95, p. 20 (emph. added). Petitioners reluctantly acknowledge that

the instruction was correct, albeit "technically" so. Petition at 4.

REASONS FOR DENYING THE WRIT

I. No Jurisdiction.

For Supreme Court jurisdiction, 28 U.S.C. § 1257(a) requires a claim of right under a federal statute. Wisely, this Court may not review judgments from state courts that are grounded in state law. *Herb v Pitcairn*, 324 U.S. 117, 125-26 (1944) ("Our only power over state judgments is to correct to the extent that they incorrectly adjudge federal rights."); *Cousins v Wigoda*, 419 U.S. 477, 487 (1975) (adequate state law ground forecloses Supreme Court jurisdiction). As already shown, the Michigan appellate court decided a state law question of Michigan public policy.

Also, the Michigan Court of Appeals decided that the public policy jury instruction adequately informed the jury of the applicable law. Op., Petitioners' Appendix B at 7a. Petitioners admitted to the Michigan Supreme Court that the jury instruction was correct. Petitioners' objection in the trial court was made by a motion for directed verdict. Under Michigan law, the appellate court then reviews the trial court evidence to decide whether "no factual question exists upon which reasonable minds may differ." *Id.* at 10a. This Court does not grant review upon issues about the sufficiency of evidence. See *Brooke Group Ltd v Brown & Williamson Tobacco Corp*, 509 U.S. 209, 230 (1993); *NLRB v Hendricks County Rural Elec. Membership*

Corp, 454 U.S. 170, 177 (1981) (a question of fact does not merit Court review).

It is fundamental that under 28 U.S.C. § 1257(a) this Court will not review state court decisions on an issue not raised in the lower courts. *Yee v City of Escondido,* 503 U.S. 519, 533 (1992); *Beck v Washington,* 369 U.S. 541, 553 (1962). Nor does this Court have jurisdiction if the federal claim was not adequately presented in the state court. *Webb v Webb,* 451 U.S. 493, 496-97 (1981). Also see *Sochor v Florida,* 504 U.S. 527, 533 (1992) (no jurisdiction if objection not preserved for appeal). As already noted, petitioners did not preserve an objection to the legal sufficiency of respondent's claim, i.e., whether the federal statute applied to or conferred rights upon plaintiff. Op., Petitioners' Appendix B at 7a.

II. Moreover, There Is No Important Federal Question.

Supreme Court Rule 10 advises that "a writ of certiorari will be granted only for compelling reasons." In particular, for appeals from a state court, this Court will consider whether the state court decided an important federal question that conflicts with other appellate decisions or is one that should be settled by the Supreme Court. Supreme Court Rule 10(b) and (c). See *Rice v Sioux City Memorial Park Cemetery,* 349 U.S. 70, 74 (1955) (Court does not decide cases to satisfy a scholarly interest or for the benefit of particular litigants; the problem should be beyond the academic or episodic).

Petitioners cite no case that conflicts with the Michigan Court of Appeals decision. To the contrary, the few reported decisions are in accord that there is a public

policy protecting an employer's bargaining representative from union threats against his job security. See *Sherman v St. Barnabas Hospital,* 535 F.Supp. 464, 572 (S.D.N.Y. 1982) (to permit employer to discharge an employee because of union threats would foster future union coercion and is contrary to public policy); *Intern. Org. Of Masters v NLRB,* 539 F.2d 554, 560 (5th Cir. 1976) (relations between an employer and its supervisory personnel should be isolated from union coercion). Furthermore, while the parties here regard this case and the public policy involved as important to them, the relative absence of decisional law or of any conflict with other decisions suggests a lack of federal importance.

Petitioners also argue that Michigan has not sufficiently restricted public policy claims. According to petitioners, there is a conflict among state courts whether they may derive public policy from non-legislative sources and that Michigan has adopted an expansive interpretation.[1] Petition, pp. 8-11. Whatever may be the merits of that legal discussion, no federal question, much less an important one, is involved. Instead, this is a question of Michigan public policy applicable to a termination of an employee.

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[1] However, as appears from the Court of Appeals opinion, the court did refer to a legislative source, 24 U.S.C. § 158(b)(1)(B). Thus, petitioners' concern may be of legal interest, but is irrelevant.

CONCLUSION

Petitioners misapprehend the Michigan Court of Appeals' decision. That court did not interpret or declare respondent's rights granted by a federal statute. Instead, the Michigan court decided Michigan public policy and that the petitioners "discharged plaintiff in contravention of the public policy of this state." Op., Petitioners' Appendix B at 9a. There is no apparent error in finding a public policy protecting the job security of an employer's collective bargaining representative from union pressure. Moreover, this Court does not have jurisdiction over a claim brought under state law that an employee was fired in breach of the state's public policy, nor does that theory present an important federal question.

This Court should deny the petition for writ of certiorari.

Respectfully submitted,

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